

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Swanson

December 1, 2008

An act to amend Sections 186.2, 266k, and 13837 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Swanson. Human trafficking.

Existing law, the California Control of Profits of Organized Crime Act, provides the procedure for the forfeiture of property acquired through a pattern of criminal profiteering activity and for the forfeiture of the proceeds of a pattern of criminal profiteering activity, as specified, and requires the prosecution to file a petition for forfeiture in conjunction with certain criminal charges. Under existing law, criminal profiteering activity is defined to include specified crimes.

This bill, ~~entitled the Human Trafficking Accountability Act~~, would include abduction or procurement by fraudulent inducement for prostitution within the definition of criminal profiteering activity, as specified.

Existing law authorizes the sentencing court to impose an additional fine of up to \$5,000 on any person convicted of pimping, pandering, or procurement of a child under 16 years of age, as specified.

This bill would increase the maximum amount of additional authorized fine to \$20,000 *for any person convicted of procurement of a child*

under 16 years of age, as specified. The bill would also authorize the court to order a defendant convicted of abducting a person under 18 years of age for the purpose of prostitution to pay an additional fine of \$20,000.

Existing law provides that every fine imposed and collected for a person convicted of pimping, pandering, or procurement of a child under 16 years of age be deposited in the Victim-Witness Assistance Fund to be available for appropriation to the Office of Emergency Services for grants to child exploitation and child sexual abuse victim counseling centers and prevention programs.

This bill would require that 50% of those fines collected and deposited in the Victim-Witness Assistance Fund pursuant to these provisions, including the fine authorized in the bill for abducting a minor for the purpose of prostitution, be granted to community-based organizations that serve minor victims of human trafficking.

~~Existing law requires the Office of Emergency Services to provide grants to proposed and existing child sexual exploitation and child sexual abuse victim counseling centers and prevention programs, as specified.~~

~~This bill would require 50 percent of the funds granted to those centers and programs to be granted to community-based organizations that serve minor victims of human trafficking.~~

Because this bill would increase the penalty for an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. This act shall be known, and may be cited, as the~~
- 2 ~~Human Trafficking Accountability Act.~~
- 3 ~~SEC. 2.~~
- 4 ~~SECTION 1.~~ Section 186.2 of the Penal Code is amended to
- 5 read:

1 186.2. For purposes of this chapter, the following definitions
2 apply:

3 (a) “Criminal profiteering activity” means any act committed
4 or attempted or any threat made for financial gain or advantage,
5 which act or threat may be charged as a crime under any of the
6 following sections:

7 (1) Arson, as defined in Section 451.

8 (2) Bribery, as defined in Sections 67, 67.5, and 68.

9 (3) Child pornography or exploitation, as defined in subdivision
10 (b) of Section 311.2, or Section 311.3 or 311.4, which may be
11 prosecuted as a felony.

12 (4) Felonious assault, as defined in Section 245.

13 (5) Embezzlement, as defined in Sections 424 and 503.

14 (6) Extortion, as defined in Section 518.

15 (7) Forgery, as defined in Section 470.

16 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
17 and Section 337i, except the activities of a person who participates
18 solely as an individual bettor.

19 (9) Kidnapping, as defined in Section 207.

20 (10) Mayhem, as defined in Section 203.

21 (11) Murder, as defined in Section 187.

22 (12) Pimping and pandering, as defined in Section 266.

23 (13) Receiving stolen property, as defined in Section 496.

24 (14) Robbery, as defined in Section 211.

25 (15) Solicitation of crimes, as defined in Section 653f.

26 (16) Grand theft, as defined in Section 487.

27 (17) Trafficking in controlled substances, as defined in Sections
28 11351, 11352, and 11353 of the Health and Safety Code.

29 (18) Violation of the laws governing corporate securities, as
30 defined in Section 25541 of the Corporations Code.

31 (19) Any of the offenses contained in Chapter 7.5 (commencing
32 with Section 311) of Title 9, relating to obscene matter, or in
33 Chapter 7.6 (commencing with Section 313) of Title 9, relating to
34 harmful matter that may be prosecuted as a felony.

35 (20) Presentation of a false or fraudulent claim, as defined in
36 Section 550.

37 (21) False or fraudulent activities, schemes, or artifices, as
38 described in Section 14107 of the Welfare and Institutions Code.

39 (22) Money laundering, as defined in Section 186.10.

1 (23) Offenses relating to the counterfeit of a registered mark,
2 as specified in Section 350.

3 (24) Offenses relating to the unauthorized access to computers,
4 computer systems, and computer data, as specified in Section 502.

5 (25) Conspiracy to commit any of the crimes listed above, as
6 defined in Section 182.

7 (26) Subdivision (a) of Section 186.22, or a felony subject to
8 enhancement as specified in subdivision (b) of Section 186.22.

9 (27) Any offenses related to fraud or theft against the state's
10 beverage container recycling program, including, but not limited
11 to, those offenses specified in this subdivision and those criminal
12 offenses specified in the California Beverage Container Recycling
13 and Litter Reduction Act, commencing at Section 14500 of the
14 Public Resources Code.

15 (28) Human trafficking, as defined in Section 236.1.

16 (29) Theft of personal identifying information, as defined in
17 Section 530.5.

18 (30) Offenses involving the theft of a motor vehicle, as specified
19 in Section 10851 of the Vehicle Code.

20 (31) Abduction or procurement by fraudulent inducement for
21 prostitution, as defined in Section 266a.

22 (b) (1) "Pattern of criminal profiteering activity" means
23 engaging in at least two incidents of criminal profiteering, as
24 defined by this chapter, that meet the following requirements:

25 (A) Have the same or a similar purpose, result, principals,
26 victims, or methods of commission, or are otherwise interrelated
27 by distinguishing characteristics.

28 (B) Are not isolated events.

29 (C) Were committed as a criminal activity of organized crime.

30 (2) Acts that would constitute a "pattern of criminal profiteering
31 activity" may not be used by a prosecuting agency to seek the
32 remedies provided by this chapter unless the underlying offense
33 occurred after the effective date of this chapter and the prior act
34 occurred within 10 years, excluding any period of imprisonment,
35 of the commission of the underlying offense. A prior act may not
36 be used by a prosecuting agency to seek remedies provided by this
37 chapter if a prosecution for that act resulted in an acquittal.

38 (c) "Prosecuting agency" means the Attorney General or the
39 district attorney of any county.

(d) “Organized crime” means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. “Organized crime” also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. “Organized crime” also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5.

(e) “Underlying offense” means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

~~SEC. 3.~~

SEC. 2. Section 266k of the Penal Code is amended to read:

266k. (a) Upon the conviction of any person for a violation of Section 266h, ~~266i, or 266j~~ or 266i, the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ~~twenty thousand dollars (\$20,000)~~ five thousand dollars (\$5,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense and the circumstances of its commission, whether the defendant derived any economic gain as the result of the crime, and the extent to which the victim suffered losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs under Section 13837.

(b) *Upon the conviction of any person for a violation of Section 266j or 267, the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed twenty thousand dollars (\$20,000).*

(c) *Fifty percent of the fines collected pursuant to subdivision (b) and deposited in the Victim-Witness Assistance Fund pursuant*

1 *to subdivision (a) shall be granted to community-based*
2 *organizations that serve minor victims of human trafficking.*

3 ~~(b)~~

4 (d) If the court orders a fine to be imposed pursuant to this
5 section, the actual administrative cost of collecting that fine, not
6 to exceed 2 percent of the total amount paid, may be paid into the
7 general fund of the county treasury for the use and benefit of the
8 county.

9 ~~SEC. 4.~~

10 SEC. 3. Section 13837 of the Penal Code is amended to read:

11 13837. (a) The OES shall provide grants to proposed and
12 existing child sexual exploitation and child sexual abuse victim
13 counseling centers and prevention programs, including programs
14 for minor victims of human trafficking. Grant recipients shall
15 provide appropriate in-person counseling and referral services
16 during normal business hours, and maintain other standards or
17 services which shall be determined to be appropriate by the
18 advisory committee established pursuant to Section 13836 as grant
19 conditions. The advisory committee shall identify the criteria to
20 be utilized in awarding the grants provided by this chapter before
21 any funds are allocated.

22 In order to be eligible for funding pursuant to this chapter, the
23 centers shall demonstrate an ability to receive and make use of
24 any funds available from governmental, voluntary, philanthropic,
25 or other sources which may be used to augment any state funds
26 appropriated for purposes of this chapter. Each center receiving
27 funds pursuant to this chapter shall make every attempt to qualify
28 for any available federal funding.

29 State funds provided to establish centers shall be utilized when
30 possible, as determined by the advisory committee, to expand the
31 program and shall not be expended to reduce fiscal support from
32 other public or private sources. The centers shall maintain quarterly
33 and final fiscal reports in a form to be prescribed by the
34 administering agency. In granting funds, the advisory committee
35 shall give priority to centers which are operated in close proximity
36 to medical treatment facilities.

37 ~~Fifty percent of the funds granted to recipients pursuant to this~~
38 ~~section shall be granted to community-based organizations that~~
39 ~~serve minor victims of human trafficking.~~

1 (b) (1) It is the intent of the Legislature that a goal or purpose
2 of the OES shall be to ensure that all victims of sexual assault and
3 rape receive comprehensive, quality services, and to decrease the
4 incidence of sexual assault through school and community
5 education and prevention programs.

6 (2) The OES and the advisory committee established pursuant
7 to Section 13836 shall collaboratively administer sexual
8 assault/rape crisis center victim services programs and provide
9 grants to proposed and existing sexual assault services programs
10 (SASPs) operating local rape victim centers and prevention
11 programs. All SASPs shall provide the services in subparagraphs
12 (A) to (G), inclusive, and to the extent federal funding is made
13 available, shall also provide the service described in subparagraph
14 (H). The OES shall provide financial and technical assistance to
15 SASPs in implementing the following services:

16 (A) Crisis intervention, 24 hours per day, seven days per week.

17 (B) Followup counseling services.

18 (C) In-person counseling, including group counseling.

19 (D) Accompaniment services.

20 (E) Advocacy services.

21 (F) Information and referrals to victims and the general public.

22 (G) Community education presentations.

23 (H) Rape prevention presentations and self-defense programs.

24 (3) The funding process for distributing grant awards to SASPs
25 shall be administered as follows:

26 (A) The OES and the advisory committee established pursuant
27 to Section 13836 shall collaboratively adopt each of the following:

28 (i) The process and standards for determining whether to grant,
29 renew, or deny funding to any SASP applying or reapplying for
30 funding under the terms of the program.

31 (ii) For SASPs applying for grants under the RFP process
32 described in subparagraph (B), a system for grading grant
33 applications in relation to the standards established pursuant to
34 clause (i), and an appeal process for applications that are denied.
35 A description of this grading system and appeal process shall be
36 provided to all SASPs as part of the application required under the
37 RFP process.

38 (iii) For SASPs reapplying for funding under the RFA process
39 described in subparagraph (D), a system for grading the
40 performance of SASPs in relation to the standards established

1 pursuant to clause (i), and an appeal process for decisions to deny
2 or reduce funding. A description of this grading system and appeal
3 process shall be provided to all SASPs receiving grants under this
4 program.

5 (B) Grants for centers that have previously not been funded or
6 were not funded in the previous cycle shall be awarded as a result
7 of a competitive request for proposal (RFP) process. The RFP
8 process shall comply with all applicable state and federal statutes
9 for sexual assault/rape crisis center funding, and to the extent
10 possible, the response to the RFP shall not exceed 25 narrative
11 pages, excluding attachments.

12 (C) Grants shall be awarded to SASPs that propose to maintain
13 services previously granted funding pursuant to this section, to
14 expand existing services or create new services, or to establish
15 new sexual assault/rape crisis centers in underserved or unserved
16 areas. Each grant shall be awarded for a three-year term.

17 (D) SASPs reapplying for grants shall not be subject to a
18 competitive bidding grant process, but shall be subject to a request
19 for application (RFA) process. The RFA process for a SASP
20 reapplying for grant funds shall consist in part of an assessment
21 of the past performance history of the SASP in relation to the
22 standards established pursuant to subparagraph (A). The RFA
23 process shall comply with all applicable state and federal statutes
24 for sexual assault/rape crisis center funding, and to the extent
25 possible, the response to the RFA shall not exceed 10 narrative
26 pages, excluding attachments.

27 (E) Any SASP funded through this program in the previous
28 grant cycle shall be funded upon reapplication, unless its past
29 performance history fails to meet the standards established pursuant
30 to clause (i) of subparagraph (A).

31 (F) The OES shall conduct a minimum of one site visit every
32 three years for each agency funded to provide sexual assault/rape
33 crisis centers. The purpose of the site visit shall be to conduct a
34 performance assessment of, and provide subsequent technical
35 assistance for, each center visited. The performance assessment
36 shall include, but need not be limited to, a review of all of the
37 following:

38 (i) Progress in meeting program goals and objectives.

39 (ii) Agency organization and facilities.

40 (iii) Personnel policies, files, and training.

1 (iv) Recordkeeping, budgeting, and expenditures.

2 (v) Documentation, data collection, and client confidentiality.

3 (G) After each site visit conducted pursuant to subparagraph
4 (F), the OES shall provide a written report to the SASP
5 summarizing the performance of the SASP, any deficiencies noted,
6 any corrective action needed, and a deadline for corrective action
7 to be completed. The OES shall also develop a corrective action
8 plan for verifying the completion of any corrective action required.
9 The OES shall submit its written report to the SASP no more than
10 60 days after the site visit. No grant under the RFA process shall
11 be denied if the SASP did not receive a site visit during the
12 previous three years, unless the OES is aware of criminal violations
13 relative to the administration of grant funding.

14 (H) SASPs receiving written reports of deficiencies or orders
15 for corrective action after a site visit shall be given no less than
16 six months' time to take corrective action before the deficiencies
17 or failure to correct may be considered in the next RFA process.
18 However, the OES shall have the discretion to reduce the time to
19 take corrective action in cases where the deficiencies present a
20 significant health or safety risk or when other severe circumstances
21 are found to exist. If corrective action is deemed necessary, and a
22 SASP fails to comply, or if other deficiencies exist that, in the
23 judgment of the OES, cannot be corrected, the OES shall
24 determine, using its grading system, whether continued funding
25 for the SASP should be reduced or denied altogether. If a SASP
26 has been determined to be deficient, the OES may, at any point
27 during the SASP's funding cycle following the expiration of the
28 period for corrective action, deny or reduce any further funding.

29 (I) If a SASP applies or reapplies for funding pursuant to this
30 section and that funding is denied or reduced, the decision to deny
31 or reduce funding shall be provided in writing to the SASP, along
32 with a written explanation of the reasons for the reduction or denial
33 made in accordance with the grading system for the RFP or RFA
34 process. Except as otherwise provided, any appeal of the decision
35 to deny or reduce funding shall be made in accordance with the
36 appeal process established by the OES. The appeal process shall
37 allow a SASP a minimum of 30 days to appeal after a decision to
38 deny or reduce funding. All pending appeals shall be resolved
39 before final funding decisions are reached.

(J) It is the intent of the Legislature that priority for additional funds that become available shall be given to currently funded, new, or previously unfunded SASPs for expansion of services. However, the OES may determine when expansion is needed to accommodate underserved or unserved areas. If supplemental funding is unavailable, the OES shall have the authority to lower the base level of grants to all currently funded SASPs in order to provide funding for currently funded, new, or previously unfunded SASPs that will provide services in underserved or unserved areas. However, to the extent reasonable, funding reductions shall be reduced proportionately among all currently funded SASPs. After the amount of funding reductions has been determined, SASPs that are currently funded and those applying for funding shall be notified of changes in the available level of funding prior to the next application process. Funding reductions made under this paragraph shall not be subject to appeal.

(K) Notwithstanding any other provision of this section, the OES may reduce funding to a SASP funded pursuant to this section if federal funding support is reduced. Funding reductions as a result of a reduction in federal funding shall not be subject to appeal.

(L) Nothing in this section shall be construed to supersede any function or duty required by federal acts, rules, regulations, or guidelines for the distribution of federal grants.

(M) As a condition of receiving funding pursuant to this section, a SASP shall do each of the following:

(i) Demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources that may be used to augment any state funds appropriated for purposes of this chapter.

(ii) Make every attempt to qualify for any available federal funding.

(N) For the purposes of this paragraph, “sexual assault” means an act or attempt made punishable by Section 220, 261, 261.5, 262, 264.1, 266c, 285, 286, 288, 288a, or 647.6.

(O) For the purposes of this paragraph, “sexual assault service program” or “SASP” means an agency operating a sexual assault/rape crisis center.

~~SEC. 5.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O